



**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
**Two Gateway Center**  
**Newark, NJ 07102**  
**[www.nj.gov/bpu/](http://www.nj.gov/bpu/)**

TELECOMMUNICATIONS

IN THE MATTER OF THE PETITION OF OPTICAL )  
COMMUNICATIONS GROUP, INC. FOR APPROVAL TO )  
PROVIDE LOCAL EXCHANGE AND INTEREXCHANGE )  
TELECOMMUNICATIONS SERVICES THROUGHOUT )  
THE STATE OF NEW JERSEY )

ORDER

DOCKET NO. TE09080663

Andrew O. Isar, Regulatory Consultant, Miller Isar, Inc. Gig Harbor, Washington – for Petitioner

Brad Ickes, President, Optical Communications Group, Inc. Glendale, New York - Petitioner

BY THE BOARD:

Pursuant to N.J.S.A. 48:2-1 et seq. and Section 253 of the Federal Telecommunications Act of 1996, 47 U.S.C. §151 et seq., and by letter dated August 14, 2009, Optical Communications Group, Inc. ("Petitioner" or "OCGI") filed a Petition with the New Jersey Board of Public Utilities ("Board") requesting authority to provide facilities-based and resold competitive local exchange, interexchange and exchange access telecommunications services throughout the State of New Jersey. Petitioner has submitted its financial information under seal and has filed a Motion for Confidentiality along with a sworn affidavit with substantiation for confidential treatment in accordance with the Board's rules for determining confidentiality, N.J.A.C. 14:1-12.1 et seq. and in compliance with the Open Public Records Act, N.J.S.A. 47:1A-1 et seq.

OCGI is a privately owned company organized under the laws of the State of New York. Brad Ickes is the president and principal owner having 100% ownership interest in the company. He is also the president and principal owner of BMI Technologies Inc. and BMI Glendale Holdings, Inc., affiliates of OCGI. OCGI does not own nor is it owned by any other corporation. OCGI does not conduct business under any other name. Petitioner's principal offices are located at 79-24, 71<sup>st</sup> Avenue, Glendale, New York 11385.

Petitioner has submitted a copy of its Certificate of Incorporation from the State of New York and its New Jersey Certificate of Authority to operate as a Foreign Corporation. Petitioner is a provider of broadband facilities and transport services for commercial subscribers and maintains intrastate operating authority to provide such facilities and transport services in the State of New York. OCGI is currently authorized to provide telecommunications services in the State of New York. The company states that it has not been denied authority to provide telecommunications services, its authority has not been revoked in any jurisdiction and it has not been the subject of

any civil or criminal proceedings. OCGI is currently engaged in negotiations with Verizon New Jersey to interconnect to the incumbent local exchange carriers' facilities to provide broadband facilities and transport services to commercial subscribers in the States of New Jersey and New York.

Petitioner seeks authority to provide facilities-based and resold competitive local exchange, transport, interexchange and exchange access telecommunications services in Verizon New Jersey service territory throughout the State of New Jersey. Petitioner requests said authority exclusively to comply with New Jersey Department of Transportation's ("NJDOT") Right of Way and Application Checklist as set forth in the N.J.A.C. 16:25-1.2 and 16:41-5.6 respectively and to fulfill NJDOT's regulatory requirements and policy. Petitioner proposes to deploy a broadband facility in New Jersey to be used in serving an existing commercial subscriber situated in New York City, through the provision of interstate data transmission service originating at the subscriber's New York offices and terminating in the State of New Jersey. Petitioner currently provides a variety of sophisticated broadband services and facilities in the State of New York and manages a central office switch in Manhattan, Queens, Brooklyn and Long Island. Petitioner proposes to deploy the following fiber optic broadband facilities in NJDOT's Right of Way:

- 1) A fiber optic broadband facility to interconnect between Petitioner's Manhattan point of presence and overseas cables located in Tuckerton and Manasquan New Jersey;
- 2) A second primary fiber optic broadband facility to interconnect cables originating from Staten Island New York, transiting through Perth Amboy New Jersey and interconnecting to NJDOT's facilities; and
- 3) Future expansion of facilities from Perth Amboy to Newark and Jersey City New Jersey.

Petitioner is not filing a proposed tariff for Board approval because there is no intrastate component and exchange access services that will be provided to interconnecting carriers, therefore not necessitating such a filing. Petitioner fully acknowledges that although it will not be providing telecommunications services in New Jersey, it will nevertheless be subject to Board regulations otherwise also applied to regulated entities. Should Petitioner elect to provide telecommunications services in New Jersey at a later time, it will file a proposed tariff for Board review. Petitioner maintains a toll-free number for customer service inquiries.

Petitioner requests a waiver of N.J.S.A. 48:3-7.8 and N.J.A.C. 14:1-4.3, which requires that books and records be kept within the State of New Jersey and be maintained in accordance with the Uniform System of Accounts ("USOA"), respectively. In the interest of efficiency and to prevent undue burden, Petitioner requests permission to maintain its books and records in accordance with Generally Accepted Accounting Principles and to keep all books, records, documents and other writings incident to the conduct of Petitioner's business in the State of New Jersey at Petitioner's corporate offices located in Glendale, New York. Petitioner also states, upon written notice from the Board and/or Board Staff, it will provide its books and records at such time and place within New Jersey as the Board may designate and will pay any reasonable expenses for examination of the records.

Petitioner asserts that approval of its Petition will further the public interest by expanding the availability of competitive telecommunications services in the State of New Jersey. Petitioner also asserts that approval of this Petition will provide New Jersey customers with access to new technologies and service choices and will permit customers to achieve increased efficiencies and cost savings.

With regard to its technical and managerial qualifications, OCGI states that it possesses the technical capability and managerial qualifications to operate and manage its telecommunications operations in the State of New Jersey. Petitioner has submitted the professional biographies of its key personnel, who, according to OCGI, are well qualified to execute its business plans and have extensive managerial and technical experience in the telecommunications industry.

## DISCUSSION

On February 8, 1996, the Federal Telecommunications Act of 1996, P.L. 104-104, 110 Stat. 56, codified in scattered sections of 47 U.S.C. §151 et seq., was signed into law, removing barriers to competition by providing that "[n]o State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service." 47 U.S.C. §253(a).

Any grant of authority is subject to the right of the Board as the state regulatory authority to impose requirements necessary to protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers. 47 U.S.C. §253(c).

In considering this Petition, the Board recognizes its obligation not to prohibit entry into intrastate telecommunications markets of qualified applicants. 47 U.S.C. §253(a). The Board also considers the New Jersey State Legislature's declaration that it is the policy of the State to provide diversity in the supply of telecommunications services and the Legislature's findings that "competition will promote efficiency, reduce regulatory delay, and foster productivity and innovation" and "produce a wider selection of services at competitive market-based prices." N.J.S.A. 48:2-21.16(a)(4); N.J.S.A. 48:2-21.16(b)(1) and (3).

Therefore, having reviewed OCGI's Petition and the information supplied in support thereof, the Board FINDS that the Petitioner is in compliance with the Board's filing requirements to provide telecommunications services in New Jersey. Accordingly, the Board HEREBY AUTHORIZES the Petitioner to provide local exchange and interexchange telecommunications services throughout the State of New Jersey.

The Board also FINDS that in accordance with N.J.S.A. 48:2-59 and 48:2-60 and N.J.S.A. 52:27EE-52 the Petitioner is subject to an annual assessment by both the Board and the Division of Rate Counsel, respectively. The Board notes that the Petitioner will not be permitted to provide telecommunications services until a tariff is filed with the Board.

The Board HEREBY ORDERS that:

- 1) Pursuant to N.J.S.A. 48:2-16(2)(b) and N.J.A.C. 14:3-6.3, Petitioner shall file an annual report as of December 31 of each year, which is due on or before March 31 of the following year. Pursuant to N.J.S.A. 48:2-16.3, if Petitioner fails to file an annual report by the due date, Petitioner shall be subject to a penalty of \$5.00 for each day thereafter until such report is filed.
- 2) Pursuant to N.J.S.A. 48:2-62, Petitioner shall file a statement of gross intrastate revenues from operations form (AR3-1) as of December 31 of each year, which is due on or before June 1 of the following year.

On or before February 1<sup>st</sup> of each year, the Petitioner will receive from the Division of Audits an annual report package and a statement of gross intrastate revenues from operations form for the preceding calendar year. The purpose of these documents is to report the Petitioner's financial information and gross intrastate revenues from operations as of December 31 of each year. The annual report and a statement of gross intrastate revenues from operations form are due on or before March 31 and June 1 of the following year, respectively. If Petitioner does not receive these documents, it is Petitioner's responsibility to obtain them from the Board. It is also the Petitioner's responsibility to ensure timely filing of these reports.

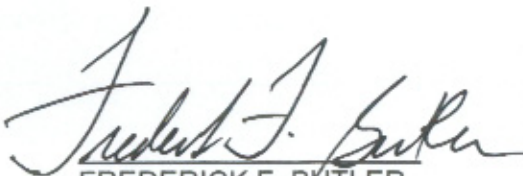
Regarding the Petitioner's request for waivers of the Board rules, the Board FINDS that the Petitioner has demonstrated good cause why the Board should grant relief from its requirements that the Petitioner maintains its books and records in accordance with USOA and within New Jersey. Therefore, subject to the Petitioner's continuing responsibility to provide the Board books and records upon 48 hours notice, and in the manner requested, and to pay to the Board any reasonable expenses or charges incurred by the Board for any investigation or examination of these books and records, the Board APPROVES the Petitioner's request for the exemptions from maintaining its books and records in accordance with USOA and in New Jersey.

DATED: 11/10/09

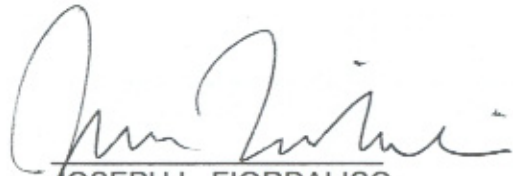
BOARD OF PUBLIC UTILITIES  
BY:



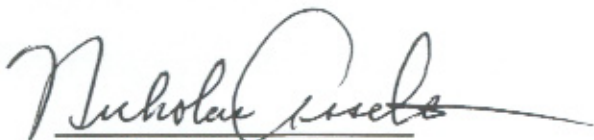
JEANNE M. FOX  
PRESIDENT



FREDERICK F. BUTLER  
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JOSEPH L. FIORDALISO  
COMMISSIONER

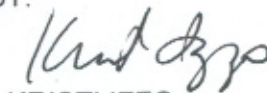


NICHOLAS ASSELTA  
COMMISSIONER



ELIZABETH RANDALL  
COMMISSIONER

ATTEST:

  
KRISTI IZZO  
SECRETARY

I HEREBY CERTIFY that the within  
document is a true copy of the original  
in the files of the Board of Public  
Utilities



IN THE MATTER OF THE PETITION OF OPTICAL COMMUNICATIONS GROUP, INC.  
FOR AUTHORITY TO PROVIDE LOCAL EXCHANGE AND  
INTEREXCHANGE TELECOMMUNICATIONS SERVICES  
IN THE STATE OF NEW JERSEY

DOCKET NO. TE09080663

SERVICE LIST

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